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A (Non-)Applicability of Conventions 148 and 155 of the International Labour Organization in the Brazilian Domestic Law

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1. Introduction

The International Labour Law is one of the most important ramifications of the Public International Law, thus, it does not constitute an autonomous branch of legal science. Its objective is the protection of a worker either as a subject of a work contract or as a human being, having for groundings reasons of economic and social order and technical character.[1]

The International Labour Procedural Law uses in its normative activity, emphasizing the international treaties, in general, the recommendations, the declarations and the Conventions, all elaborated within the framework of the ILO and that must be incorporated in the domestic law of the States.

In the light of this precept, the study proposed here seeks to analyse the (non-)applicability of Conventions 148 and 155 of the International Labour Organization in the scope of domestic

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1 Sussekind, 2005.

law, in order to verify whether the position previously upheld by the Superior Labour Court, the impossibility of cumulating the additional costs of insalubrity and dangerousness, does not contradict the ratification of the Conventions in the sphere of domestic law, since, while ratifying an international instrument, it also incorporates the legal order of the country and, consequently, draws the responsibility for compliance to itself.

Outlined the purpose of this analyses, it was sought through a bibliographical-theoretical research, of a deductive nature, to examine the positioning of doctrine and jurisprudence on the subject. Seeking an approach that contemplates understanding both favourable and unfavourable to cumulation.

To this end, the study begins with a general overview of ILO Conventions 148 and 155, duly ratified by Brazil, evolving towards the conceptualization of unhealthy and hazardous additional remuneration, to finally address the favourable and unfavourable understandings on the cumulation of unhealthy and dangerous/dangerous/hazardous additional measures under domestic law.

In the end, the text presents the position adopted by the authors, who adhere to the addition of the additions, for the reasons to be verified in this text, already beginning with the ratification of ILO Conventions 148 and 155 by Brazil.

In addition, all Brazilian authors' text mentioned in this text will be translated freely, in order for the readers to understand the text more clearly.

2. Conventions 148 and 155 of the International Labour Organization (ILO) Ratified by Brazil

The main objectives of the International Labour Organization are to raise the quality of life of workers and to protect their health within the work environment, to develop a decent work for all, and to create job opportunities for men and women. In order for a convention adopted by the ILO to be valid in the Brazilian legal system, it must necessarily pass through the National Congress. Once ratified, it will acquire normative force and will become a part of the domestic legislation, and therefore must be applied in the decisions of the Courts and, being able to modify, create, complement or derogate another norm in force in the country.

> The ILO aims at international labour regulation through programs to achieve full employment and raising standards of living; the employment of workers in occupations where they can have the satisfaction of giving the widest measure of their abilities and of making their greatest contribution to the common welfare; the provision of vocational training and the transfer of workers, including migration of laborers and settlers, as a means of achieving this end and under adequate guarantees for all concerned; the extension of social security measures to provide a basic income to those in need of such protection and full medical care;

> adequate protection of the life and health of workers in all occupations; protection of children and maternity; adequate food, housing, recreation and culture facility; the guarantee of equal educational and professional opportunities.[2]

With regard to Brazil, the ILO has maintained representation in the country since 1950, with programs and activities that truly reflect the objectives that the institution has gained throughout its history.

The Convention Number 148 of the International Labour Organization (ILO) enacted on June 20th, 1977, issued regulations on the protection of workers against occupational hazards due to contamination of air, noise, and vibration in the workplace. This Convention was ratified by Brazil on January 14th, 1982. Later, precisely on September 29th, 1994, Brazil also ratified Convention number 155, which dealt with occupational safety and health and the working environment.[3]

> The (ILO) conventions are international treaties, incorporated into the Brazilian Law before Constitutional amendment number 45/2004, and therefore without the quorum provided for in paragraph 3 of Article 5 of the (Federal Constitution), have status of federal law and as having status of fundamental rights norms must be respected and prioritized on the standard bargaining.[4]

The Conventions number 148 and 155 (ILO) have constitutional standard status, or at least supralegal rule status. In both, it is possible to verify the concern that this International Organization had in creating labour environmental policies that prevent accidents and damages to the health of the worker. At this point, it is important to highlight the content of these conventions.

2.1. Convention 148 of the International Labour Organization

ILO Convention 148 was created at the 63rd meeting of the International Labour Conference in 1977. It was incorporated into Legislative Decree number 56/1981, however, was ratified in 1982 and entered into force only in 1983. It was promulgated by Decree number 93413/1986.

This convention is intended, as far as possible, to reduce workplace risks from air pollution and noise (noise and vibration). In order to achieve the objective and workers are effectively protected, companies must take appropriate technical measures.

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2 Sussekind, 2005, p. 1546.

3 Franco Filho, 2013.

4 Franco Filho, 2013, p. 31.

In a more detailed manner, the Convention seeks to promote the universalization of the relevant norms, in particular, on the health and protection of workers in their working environment, through measures of protection and prevention against accidents at work and occupational diseases, on medical services work, protection of machinery and against radiation and noise.

> ILO Convention 148 deals with work environment (air, noise, and vibration).
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> 1. Each Member may, in consultation with representative organizations of employers and workers, if such organizations exist, accept separately the obligations provided for in this Agreement, in respect of: (a) air contamination; b) noise; c) vibrations.
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> 2. Any Member, which does not accept the obligations under the Agreement in respect of one or more categories of risks, shall indicate it in its instrument of ratification and explain the reasons for such exclusion in the first report on the application of the Convention submitted by it Article 22 of the Constitution of the International Labour Organization. In subsequent reports, it shall indicate the status of its legislation and practice with respect to any category of risks that has been excluded and the extent to which it applies or intends to apply the Agreement to such category.
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> 3. Any Member, which at the time of ratification has not accepted the obligations under the Convention in respect of all categories of risk, shall subsequently notify the Director-General of the International Labor Office, when it considers circumstances allow, to accept such obligations in respect of one or more of the categories previously excluded. • Workers should be required to observe safety orders to prevent and limit occupational hazards due to air contamination, noise, and vibration in the workplace and to ensure protection against such hazards. • Workers or their representatives shall have the right to submit proposals, receive information and training, and to take appropriate action to ensure protection against occupational hazards due to contamination of the air, noise and vibrations in the workplace [...].

In this sense, it is important to highlight the force of the creation of a common law to several States promoting the universalization of Social Justice norms. With the same objective, ILO Convention number 155 was incorporated into our legal system.

2.2. Convention number 155 of the International Labour Organization

This convention emerged from the 67th International Labour Conference held in Geneva in 1981. It was incorporated into the Brazilian legal system by Legislative Decree number 2/1992, ratified on May 18th, 1992, entered into force only one year later. Finally, it was promulgated by Decree number 1254/1994. The importance of this convention lies in being the first of ILO Convention to make reference to the working environment, relating it to the health and safety of workers.

> DECREE 1254, September 29th, 1994 promulgates Convention 155 of the International Labour Organization on Occupational Safety and Health and the Working Environment, concluded in Geneva on June 22nd, 1981.
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> DECREES:
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> Article 155 of the International Labour Organization Convention 155 on Occupational Safety and Health and the Work Environment concluded in Geneva on June 22nd, 1981, annexed to this Decree, shall be complied with as fully as contained therein.

This Convention defined that health in respect of work encompasses not only the absence of disease or illness but also the physical and mental elements which affect health and are directly connected with occupational safety and health (Article 3).

In Article 11, item b, one can verify the very concern of creating policies about the minimization of the unhealthy and dangerous agents. Item b expresses that mechanisms must be created to eliminate the occurrence of simultaneous exposure to agents and substances.[5]

> Article 11
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> In order to give effect to the policy referred to in Article 4 of this Convention, the competent authority or authorities shall ensure that the following tasks are carried out:
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> (...)
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> (b) the determination of the operations and processes which shall be prohibited, limited or subject to authorization or control by the competent authority or authorities, as well as the determination of the substances and agents for which exposure at work is prohibited, or limited or subject to authorization or control of the competent authority or authorities; account must be taken of the health risks arising from the simultaneous exploitation of various substances or agents.

The Convention number 155 directs signatories to adopt policies for the prevention of accidents and damage to health related to work activity or to occur during work, minimizing the causes of risks in the working environment, considering design, testing, selection, substitution (local and working environment, tools, machinery and equipment, chemical and biological and physical substances and agents, operations and processes), installation, disposal, use, and maintenance of the material components of the work.

It also dealt with the relationships between the material components of work and the people who perform and supervise it, as well as the adaptation of machines, equipment, working time, work organization, operations and processes to the physical and mental capacities of workers; the training, qualification, and motivation of the persons involved in order to achieve

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[5] Franco Filho, 2013, p. 32.

adequate levels of safety and hygiene; and communication and cooperation at all levels; protection of workers and their representatives against any disciplinary action resulting from action in accordance with the policy.

The Convention underlined the need for periodic studies on occupational safety and health and the working environment to identify major problems, propose and prioritize measures, and assess results.

In this step, it is important to bring to the analysis the concepts of unhealthy and dangerous/dangerous/hazardous additional remuneration in order to evaluate what the Conventions propose when delineating about the possibility of its cumulation.

3. General Concepts on Unhealthy and Dangerous/Hazardous Additional Remuneration

Labour legislation protects, through regulations, any worker who performs his/her duties in unhealthy or dangerous activities, in order to mitigate the impact of these activities on the health of those who execute them.

This fact generates to the employee the right to realize in his/her monthly compensation the payment of an unhealthy and dangerous/hazardous additional remuneration. At this point, we intend to conceptualize these terms in order to show that, because they are diverse and distinct generating facts, the possibility of cumulation of the two additional remunerations would be possible.

3.1. Unhealthy Additional Remuneration

The unhealthy additional remuneration is provided for in Article 7, item XXIII, in the Federal Constitution of 1988 and in Article 189 et seq. of the Consolidation of Labour Rules of 1943. This is, in the words of Sergio Pinto Martins, an element detrimental to health, which gives cause to the disease. Being that the damage is caused daily to the health of the worker (Martins, 2008).

Article 189 of the Consolidation of Labour Rules states which activities or operations carried out by the worker would be considered unhealthy. It is pointed out that the distinction between this activity and an unhealthy one has the criteria based on the constitutional principles of life protection and worker safety.

The Decree number 3214/78 (NR-15) of the Ministry of Labour and Employment establishes which activities are unhealthy, as well as their rates of tolerance.

> The unhealthy additional insurance guaranteed in our "Magna Carta" (Brazilian Federal Constitution) is that paid when the worker who carries out his work in unhealthy conditions above the limits of tolerance established by the Ministry of Labour, and the risk of insalubrity "associated with any physical, chemical or biological agent, which directly or indirectly damages the worker's health in a cumulative or gradual manner".[6]

Article 192 of the Consolidation of Labour Rules stipulates that when the exposure to unhealthy agents exceeds the limits established in Administrative Rule no. 3214/78 (NR-15) of the Ministry of Labour and Employment, the worker will be entitled to a respective additional remuneration minimum grade 10%, average grade 20%, and maximum grade 40%.

Currently, the position of the Courts is that the basis of calculation would be the minimum wage, under the terms of Binding Judicial Precedent no. 4 of the Federal Supreme Court, even the Supreme Court having declared unconstitutional Article 192 of the Consolidation of Labour Rules. This position will be in force until a legal or conventional norm is enacted establishing a calculation basis different from the minimum wage for an unhealthy additional remuneration.

Also, according to item 15.3 of (NR-15) of Administrative Rule no. 3214/78, if the worker is exposed to more than one unhealthy factor, only the highest grade will be considered, and the factor cumulation will be forbidden.

3.2. Dangerous/Hazardous Additional Remuneration

The dangerous/hazardous additional remuneration is provided for in Article 7, item XXIII of (Federal Constitution of 1988) and its legal concept is described in Article 193 of the Consolidation of Labour Rules:

> Article 193. Those activities that due to their nature or working methods involve a serious risk due to permanent exposure of the worker are considered dangerous/hazardous activities or operations, in accordance with the regulations approved by the Ministry of Labour and Employment.

The additional remuneration referred is applicable when the worker has contact with flammable, explosive, or electric energy (Article 193, clause I, Consolidation of Labour Rules); or when exposed to possible situations of risk of robbery or other physical violence that the worker may suffer in his or her work when performing personal or property security (Article 193, clause II, Consolidation of Labour Rules).

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[6] Almeida, 2007, p. 115.

Thus, the dangerous/hazardous additional remuneration is appropriate when the employee is exposed:

> [...] (a) in permanent contact with flammable or explosive substances in conditions of marked risk; b) electric energy in direct and intermittent contact with electrical power systems; (c) [...] ionizing radiation or radioactive substance; d) is subject to theft or other types of physical violence in the activities of personal or patrimonial security.[7]

NR-16 of Ordinance no. 3214/78 of the Ministry of Labour and Employment is responsible for describing the activities of workers who can justify the additional remuneration.

At this level, aware of the concepts of the unhealthy and dangerous/hazardous factors and, above all, of the content of ILO Conventions 148 and 155 ratified by Brazil, it is important to emphasize below the position of doctrine and jurisprudence as to the possibility of cumulating additional already referred.

4. The Possibility of Cumulation of Additional Remuneration for Unhealthy Work and for Dangerous/Hazardous Work

The doctrine and jurisprudence debate the possibility of cumulation between unhealthy and dangerous/hazardous additional payments, notably in light of the provisions of Article 193, paragraph 2, of the Consolidation of Labour Rules, when establishing that *the employee may opt for an unhealthy additional remuneration to which he/she perhaps has the right according to ILO Conventions 148 and 155*, duly ratified by Brazil and, consequently, due to the position hitherto adopted by our Higher Labour Court.

4.1. Positions against the Cumulation of both Additional Payments

The groundings for the refusal regarding the concomitant application of unhealthy and dangerous/hazardous additional payments would be due to Article 7, item XXIII of the (CF) that establishes the right to an unhealthy and dangerous/hazardous additional payment and yet because the ordinary law could establish the form in which they would be applied, in this case the Consolidation of Labour Rules.

The majority case-law holds that, since the worker had the option of choosing the most advantageous additional payment, the legislature would have created in Article 193, paragraph 2 of the Consolidation of Labour Rules, a rule that restricted but respected the will of the worker.

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[7] Magalhes, 2014, p. 49.

In this sense, doctrine and jurisprudence go in the direction of interpreting that the term "may opt" has the meaning of "must opt", in which the employee must make the option of one of the additional payment, in case of having the right to two, due to the impossibility of receiving both simultaneously.

Sergio Pinto Martins[8] understands that it is not preventing the employee from receiving the additional payment, so much that he/she will choose the additional payment that is greater. It is also in accordance with the principle of legality that no one is obliged to do or not to do anything other than by virtue of law.

The principle of legality is used by most of the scholars,; Barros[9] affirms that if the employee works in dangerous and unhealthy conditions, simultaneously, the additional payments do not accumulate by express provision of law. The employee can opt for the additional payment that is more favourable to him/her.

Similarly, Valentin Carrion[10] states that the law prevents the accumulation of unhealthy and dangerous/hazardous additional payments; the choice of one of the two belongs to the employee.

According to these understandings, Moraes[11] affirms that if the activity of the employee is considered dangerous and unhealthy, he can opt for the additional payment that best suits him/her. In any case, there can be no cumulation.

The Superior Labor Court, at least for the time being, has ruled that unhealthy and dangerous/hazardous additional payments cannot be cumulated:

> SUPERIOR LABOR COURT – AN APPEAL ON A POINT OF LAW: RR 6247420135030102 - UNHEALTHY AND DANGEROUS/HAZARDOUS ADDITIONAL PAYMENT. CUMULATION. IMPOSSIBILITY. Pursuant to Article 193, §2nd, of the CONSOLIDATION OF LABOR RULES, it is not possible to accumulate the perception of unhealthy and dangerous/hazardous additional payments, and the worker must choose what is most beneficial to him.
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> SUPERIOR LABOR COURT – AN APPEAL ON A POINT OF LAW: R109636320145030165 - UNHEALTHY AND DANGEROUS/HAZARDOUS ADDITIONAL PAYMENT. CUMULATION. IMPOSSIBILITY. The SUPERIOR LABOR COURT established the understanding in the sense of the impossibility of cumulat-

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8 Martins. 2012, p. 262.

9 Barros, 2012, p. 628.

10 Carrion, 2011, p. 193

11 Moraes, 2003, p. 536

> ing the additions of dangerous/hazardous and insalubrious, according to interpretation of Article 193, §2nd, of the Consolidation of Labour Rules.

Referring to the position adopted for non-cumulation of the additional remuneration, it is based on the provision of Article 7, item XXIII, CR/88[12]. The prediction of the connective "or" means, for the majority, an obstacle for the hypothesis of cumulation of the additional payments.

In fact, as it has already been settled (at least until now), since it is impossible to cumulate, it remains for us to verify the groundings about the possibility of the employee receiving the two additional payments.

4.2. Positions Favourable to the Cumulation of Both Additional Payments

It has been shown up to now that the position currently defended by the Superior Labour Court is the impossibility of cumulating the two additional payments – unhealthy and dangerous/hazardous ones. It is now intended to bring to the analysis the position of the scholars (doctrine) as to the possibility of cumulating unhealthy and dangerous/hazardous additional payments.

It should be noted that for a long period the jurisprudential and doctrinal understanding regarding the prohibition on the addition of unhealthy and dangerous additional payment was predominant, when the worker worked simultaneously in unhealthy and dangerous conditions without any questioning.

However, since Brazil's ratification of international labour and worker protection instruments, this is ILO Conventions 148 and 155, this reality has been questioned and turned it into a matter of discussion of doctrine and jurisprudence.

> Simultaneous exposure to the two additional payments and obligation to opt for one of them leads to the conclusion that the work for one of the additional payment will be free to the employer. What would surely be setting the unjust enrichment in favour of the employer? The worker works in guarantee of a pecuniary consideration, when working exposed to two additional payments and receiving only one of them, is enriching his employer and subjecting himself to the imbalance of the contractual relation.[13]

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[12] Article 7. The following are rights of urban and rural workers, among others that aim to improve their social conditions:

(...)

XXIII - additional remuneration for strenuous, unhealthy or dangerous work, as established by the law …

[13] Formolo, 2006, p. 56.

Equally, Roberto Davis understands that the referred unhealthy and dangerous/hazardous additional payments have different nature and purpose, which in turn, would justify the cumulation:

> [...] it is necessary to recognize the diversity of the additional collateral in relation to the respective purposes. The salary increase due to unhealthiness aims to compensate for the morbidity of work while the one instituted due to the dangerous nature compensates the risk to the physical and the worker's life.[14]

The International Labour Organization, by means of Conventions, establishes devices for the protection of workers' health, and when it ratifies such instruments, the country is obliged to create norms and rules/laws for the protection of workers, following the rules established in the mentioned Conventions, of which it has become a signatory.

A glimpse of the issue is precisely Brazil's failure to comply with ILO Conventions 148 and 155, regarding the possibility of such cumulation. The Superior Labour Court has taken the view that these Conventions, because they contain generic content, do not make explicit the aforementioned cumulation. This, in turn, cannot trigger extensive interpretation by the Court.

Valério Mazzuoli is critical of the Superior Labour Court's position:

> The court simply threw law overboard of very important and most beneficial conventions to the worker by reforming the understanding of the 7th Chamber of the Superior Labor Court which, by controlling the Convention of Labour Law Consolidation, had correctly understood the prevalence of international conventions of the International Labour Organization Work to guarantee to the employees the right to the unhealthy and dangerous/hazardous additional payment.[15]

Complementary to Mazzuoli's understanding was the position adopted by the Superior Labor Court in the following excerpt from an earlier decision, later reformed by Superior Labour Court.

> (...) From then on, if the aforementioned Conventions are above the consolidated legislation, their provisions will prevail, as occurred with the authorization of civil arrest arising from the condition of unfaithful depository, away from the legal system of the country by decision of the Federal Supreme Court. (...) Exception would be if the conventions mentioned consented to rules less favourable to the worker, which would authorize their removal (...). Finally, it is important to point out the imposition on the Judiciary in order to make effective the aforementioned rules, rather than just recognizing their existence and effectiveness, in

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14 Davis, 2002, p. 206.

15 Mazzuoli, 2016, p. 26.

> view of the obligation imposed on them, in view of the binding nature of any Brazilian State, and not only of the Executive Power that subscribed it. (...) It is therefore for this Court to proclaim the overcoming of the internal norm in the face of another, of international origin, but beneficial, a role, moreover, proper to the Judiciary (...).[16]

It is worth noting that ILO international conventions are special human rights treaties and are prevalent (including reaffirmed by the Federal Supreme Court) on the less beneficial domestic norms, as is undoubtedly the case of Article 193, paragraph 2, of the Consolidation of Labour Rules. It occurs that, having taken up the theme to Sub-section I of the Section Specialized in Individual Claims of the Superior Labour Court, all ILO international conventions on the subject have been contradicted and the principle of the primacy of the rule more favourable to the worker has been rejected.

In fact, the possibility of cumulation of the unhealthy and dangerous/hazardous additional payments aims to curb the employer in the practice of harmful practices to the worker. By being able to add up the unhealthy and dangerous/hazardous additional payments, we would be making it possible to reduce accidents in the workplace. For it is evident that it is economically cheaper to hire an employee who simultaneously performs an unhealthy and dangerous activity than an employee for every unhealthy and dangerous activity.[17]

It is pointed out that the legal rules governing unhealthy and dangerous/hazardous additional payment do not exist to allow work under these conditions but to force employers to maintain a healthy and safe working environment.[18]

That is the proposal of the Conventions. In fact, the intention is to reduce the damage to the worker, giving priority to the environment and healthy working conditions. For this reason, the position adopted in this study, as will be seen below, is that there is a possibility of a cumulation of unhealthy and dangerous/hazardous additions.

4.3. Position Adopted in this Study

ILO Convention 148 provides for the need to constantly update legislation on harmful working conditions. Whereas Convention 155 provides that the health risks arising from the simultaneous exposure to various substances or agents are taken into account.

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16 Superior Labor Court-RR-1072-72.2011.5.02.0384, Ac. 1572/2014, 7th Chamber, Reporting judge Cláudio Mascarenhas Brandão, on 24. 9. 2014.

17 Silva, 2008.

18 Leira, 2008, p. 566.

Following the ratification of ILO Convention 155, Brazil undertook to implement and periodically review a coherent national policy on occupational safety, health, and working environment.

> The same thing, we can observe in the ILO Convention number 148, in Article 8, item 3, that asserts that:
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> [...] criteria and exposure limits shall be set, completed and reviewed at regular intervals in accordance with national and international foreground and data and taking into account, as far as possible, any resulting occupational hazard increase exposure to various harmful factors in the workplace.
>
> Yet, according to Article 4 of the Convention number 155:
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> [...] this policy shall aim to prevent accidents and damage to health which are the consequence of work, are related to work activity or occur during work, while minimizing, as far as is reasonable and feasible, the causes of the risks inherent in the work environment".

Equally, in order to give effect to the policy referred to in Article 4, the competent authority or authorities shall take into account the health risks caused by the simultaneous exposure to various substances or agents (Article 11 (b)).

Superior Labour Court's individual claims chamber understands that at no time these international rules dictate conduct to impose an obligation on employers to cumulatively pay for additional costs arising from heavier labour conditions and, therefore, does not conflict with Article 193, §2, of the Consolidation of Labour Rules. In this way, it was decided by the Superior Labour Court – case file E-RR 1081-60.2012.5.03.0064:[19]

> ILO Convention No. 155 seeks first and foremost to discourage in the work environment the practice of occupational activities that require the contact of employees with several harmful agents to their health or safety. It does not, however, provide a date for the Convention to require the Member State to adopt measures for the cumulative remuneration of additional employees as a result of the employee's exposure to a number of risk agents.
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> I also believe that, in addition to the fact that they do not contain a formal provision in opposition to Paragraph 2 of Article 193 of the Consolidation of Labour Rules, Conventions Numbers 148 and 155, as well as the international norms emanating from the ILO, have an open, generic content. They function basically as a code of conduct for the Member States. They do not, thus, directly and properly create obligations for employers represented by the signatory State.

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[19] E-ARR – 1081-60.2012.5.03.0064, Reporting judge: João Oreste Dalazen, Judgment dat: 04/28/2016, Specialized Subsection I in Individual claims, Publication data: DEJT 06/17/2016.

Yet, one cannot agree with the conclusion of the Superior Labour Court in this regard. In fact, it is agreed that at no time shall such international rules/norms dictate the obligation of cumulative additional payment. However, as the grounds for decision, ILO Convention number 155 seeks, first of all, to discourage the exercise of professional activities that require the contact of employees with several agents harmful to their health or safety in the work environment.

Accordingly, it cannot be denied that, by denying the cumulative payment of the additions, even in the event of a single generating event, the Article 193, §2nd, of the Consolidation of Labour Rules no longer fulfils the conventional command to discourage the exercise with several agents harmful to employee health and safety.

Indeed, although Conventions numbers 148 and 155 do not directly and properly create obligations for employers represented by the signatory State – as stated in the winning decision/opinion of the judges – it is certain that they create obligations for the State and, in this respect, bind the Powers of the Republic (or Executive, Legislative and Judiciary Functions), which should give concrete form to the international commitments assumed by Brazil. In this sense, the Brazilian State itself has the obligation to create rules/commands to employers located in its territory in order to comply with the provisions of the Conventions.

In addition, it is not acceptable the statement that Conventions numbers 148 and 155, as well as the international norms emanating from the ILO, have an open, generic content. They function basically as a code of conduct for the Member States. Thus, the lessons brought by Valério Mazzuoli on the subject are pertinent:

> It seems unbelievable that a Superior Court can say, especially in the present moment of the country's growing engagement in the international arena, that human rights treaties (which are special treaties) do not overlap with less beneficial domestic norms, and that, moreover, the ILO standards for the protection of workers are only codes of conduct that are incapable of creating obligations for the parties. It is, as the case may be, an example not to be followed. Such a decision, which neglects years of conquest of workers' rights and the whole evolution of the doctrine on the subject, is a true contradiction – from the ignorance of the Federal Supreme Court jurisprudence that allocates human rights treaties at supralegal level, to the unreasonable reference of that human rights treaties only "bear open content, of a generic nature" – capable of holding the Brazilian State accountable in the international arena. May the Superior Labour Court can reflect on this catastrophic decision, which in addition to demonstrating ignorance of the minimum rules of interpretation of International Human Rights Law, completely disregarded the basic principle of Labor Justice of the primacy of the norm more favorable to the worker.[20]

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[20] Mazzuoli, 2016, p. 27.

So, it became crystal clear in the present study that the subject still needs to be debated openly, not remaining settled, since, in addition to the rule more favourable to the employee being ignored, the unhealthy and hazardous additional payments have the nature and distinct purposes, which itself, already authorize cumulation.

5. Concluding Remarks

In this proposed study, the cumulative perception of unhealthy and dangerous/hazardous addition is fair, insofar as the worker can be subjected to dangerous and unhealthy agents. However, up to this date, this cumulation has not been recognized by the Superior Labour Court, which has established an understanding of the impossibility of cumulation.

There are no doubts about Brazil's ratification of International Labour Organization (ILO) Conventions numbers 148 and 155 and, above all, of the objective of these international rules in order to improve working conditions.

International norms, as example, ILO conventions, which are true special human rights treaties, are hierarchically above domestic/consolidated legislation. This, unfortunately, was not duly noted by the Superior Labour Court.

The decision-making of the majority of the Judges who sit on the Individual Claims Section in the Superior Labour Court – case file E-RR 1081-60.2012.5.03.0064 – established the legal thesis of the impossibility of cumulation of an unhealthy and hazardous addition. There is no proviso/exception, in the final decision, that permits the cumulation of the addition referred, once that what ensures the precedent is the *ratio decidendi*.

Thus, ILO Conventions number 148 and 155, although ratified by Brazil, do not have applicability in relation to the unhealthy and dangerous/hazardous addition under the domestic law, which is sadly to say, since this episode makes it clear that, in addition to the rule most beneficial to the worker being marginalized, the exhaustion of the referred norm was disregarded and placed outside the legislation. We bet that events like this do not repeat, and that the Superior Labour Court can "alter" its own decision.

It is expected, therefore, that over the years the understanding about cumulation of the unhealthy and dangerous/hazardous addition will be the majority, knowing that it may not be correct for the worker to submit to the two situations that are detrimental to his/her health and to receive compensation from only one of them, since the greatest asset we possess is life and in order to preserve it, in order to prolong it, it is necessary to fully protect the health of the worker, which should not be the object of negotiation in the employment relationship, a right that is guaranteed by the Federal Constitution.

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